

# USA PATRIOT Act Symposium

## Symposium Introduction: The Terror of the Law

By Terence R. Boga, Esq.\*

One hundred seventeen years ago Alabama Supreme Court Chief Justice George Washington Stone chastised his colleagues for rewriting the insanity defense doctrine. This admonishment from his dissenting opinion warrants obedience even more in an era in which Americans are threatened by bombers, hijackers and snipers: "... the lawless should be made to feel that the way of the transgressor is hard. The terror of the law may thus become a minister of peace."<sup>1</sup>

Two years ago Congress enacted the USA PATRIOT Act in response to unprecedented terrorist attacks against our country.<sup>2</sup> The Bush Administration has championed the statute as an integral component of the "war on terror."<sup>3</sup> Yet several states and nearly two hundred local governments have adopted resolutions opposing its expansion of law enforcement powers.<sup>4</sup> One California municipality, the City of Arcata, also has passed an "anti-PA

### ENDNOTES

- 1 Parsons v. State, 81 Ala. 577, 613 (1886) (Stone, C.J., dissenting).
- 2 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Public Law 107-56, 115 Stat. 272 (2001).
- 3 Remarks of Attorney General John Ashcroft, Protecting Life and Liberty, Memphis, Tenn. (September 18, 2003), available at <http://www.usdoj.gov/ag/speeches/2003/091803memphisremarks.htm>.

- 4 Bill of Rights Defense Committee, Chronology of Civil Liberties Resolutions and Ordinances, available at <http://www.bordc.org/Chronology.pdf>.
- 5 Arcata, Cal., Code § 2192 (2003), available at <http://www.arcatacityhall.org/Ordinance%201339.html>.

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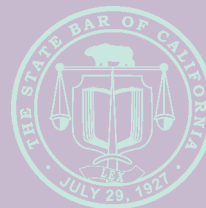
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Three years ago, one would not imagine that libraries would become entangled in the frontlines of what would become a “war on terrorism,” or that the reading records of library patrons would no longer have their historical confidentiality. It is because this new war involves intelligence gathering within the United States and abroad for use in terrorist attacks, that the federal government’s desire for information can lead to the front door of local libraries. Libraries are, after all, the repositories of information about the reading habits and interests of our citizens. The managers of our libraries are being challenged with complying with this potential increase in law enforcement demands while at the same time protecting the First Amendment based privacy rights of their patrons.

The USA PATRIOT Act<sup>1</sup> was enacted by Congress less than two months<sup>2</sup> after the terrorist attacks of September 11, 2001. It was enacted to help track down and punish terrorists and to prevent further terrorism.<sup>3</sup> Although it contains no provisions specifically directed at libraries or their patrons,<sup>4</sup> it does, however, contain four provisions that allow access to library loan records and records of library computer use.

#### I. PRODUCTION OF RECORDS

The first provision, generally referred to as the “production of records” provision of the Foreign Intelligence Surveillance Act (“FISA”), allows the Federal Bureau of Investigation (“FBI”) to gain access to any tangible things (including books, records, papers, documents and other items) from anyone who holds them if the records are sought in connection with an investigation to

protect against international terrorism or clandestine intelligence activities. Before the FBI may require the production of records, access to them must be approved by a special magistrate who must be assured that the investigation is not conducted solely upon the basis of First Amendment activities.<sup>5</sup> This provision has been interpreted by the library community as allowing access to library loan records and records of library computer use.

The PATRIOT Act contains a self-

the PATRIOT Act preempts California law when disclosure is sought by the federal government in situations covered by its provisions. Computer “sign-in” sheets, if created and maintained by libraries, may be characterized as a type of library “registration” record and could otherwise be exempt from disclosure under California law. However, those records may now be accessed under the procedures specified by the PATRIOT Act.

## II. “PEN AND TRAP” ORDERS

A second provision of the PATRIOT Act that has potential application to libraries is a provision that extends the use of telephone monitoring devices (sometimes referred to as “pen register” devices and “trap and trace” devices, and collectively as “Pen and Trap” devices) to computers so as to monitor Internet communication to and from the computer.<sup>13</sup> These devices allow law enforcement officials to secretly place on computers a form of “caller ID” that provides the FBI with the capability of identifying whom a computer user is communicating with over the Internet.<sup>14</sup>

This “Pen and Trap” provision allows the Attorney General to make an application for an order to install a “Pen and Trap” device for any investigation to protect against international terrorism provided the investigation is not conducted solely upon the basis of First Amendment activities.<sup>15</sup> The provision requires the entity controlling the computer to furnish any information, facilities, or technical assistance necessary to accomplish the installation of the device and to do so in a manner that protects the secrecy of the device.<sup>16</sup> As with the production of records provision, persons who cooperate in the installation of the device are immune from liability for having done so.<sup>17</sup>

A library that provides Internet access to patrons may one day receive a court order requiring cooperation in the monitoring of a patron’s electronic communications sent through its computers or network. If that occurs, the library would be required to cooperate in the placement of a “Pen and Trap” device on one or more of its computers.

## III. ROVING WIRETAPS

The third tool in the PATRIOT Act that is potentially applicable to libraries is the use of “roving wiretaps.”<sup>18</sup> A “roving wiretap” is a

type of court order that allows the investigating agency to obtain a single court order to monitor the content of electronic communications from any location and on any device, including e-mail and Internet communications.<sup>19</sup> The owner of the facility to which the roving wiretap is to be attached is required to provide sufficient technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect the secrecy of the device.<sup>20</sup>

This means that a library that provides

## CONCLUSION

The effect of the PATRIOT Act on libraries is yet to be fully known. While the library community is apprehensive of the chilling effect on patron use of libraries, the evidence of any change in the type or volumes of library patron usage, and the degree of general public knowledge of the PATRIOT Act among library users, is unclear. Letters that the Department of Justice has sent to Congress about the use of the statute with respect to libraries indicates the information is classified.<sup>24</sup> However, the Attorney General recently stated in a speech “Not a single American’s library records has been reviewed under the PATRIOT Act.”<sup>25</sup> Nonetheless, the level of concern that the PATRIOT Act has generated within the library community is strong and has forced libraries to revisit long-held assumptions and principles of patron privacy. Libraries are well-advised to become familiar with the types of orders that can be made under the statute and to be prepared in advance of such an order with established rules and guidelines.

## ENDNOTES

- 1 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“PATRIOT Act”), Public Law 107-56, 115 Stat. 272 (2001).
- 2 The PATRIOT Act was passed by Congress on October 26, 2001 as H.R. 3162 (Rep. Sensenbrenner, F. James, Jr.).
- 3 Congressional Research Service, Report to Congress, February 26, 2003, p. 1 <http://www.ala.org/Content/Navigation>

Menu/Our\_Association/Offices/ALA\_Washington/Issues2/Civil\_Liberties,\_Intellectual\_Freedom,\_Privacy/The\_USA\_Patriot\_Act\_and\_Libraries/CRS215LibrariesAnalysis.pdf.

- 4 Id. at 1.
- 5 PATRIOT Act, supra note 1 at § 215 (amending 50 U.S.C. §1861).
- 6 Id. at § 215(d) (amending 50 U.S.C. §1861 (d)).
- 7 Id. at § 215(e) (amending 50 U.S.C. §1861(e)).
- 8 American Library Association, Office of Intellectual Freedom, “The USA PATRIOT Act in the Library (April 2002), at <http://www.ala.org/alaorg/oif/usapatriotlibrary.html>.
- 9 Public Law 95-511.
- 10 PATRIOT Act, supra note 1 at § 215(a), (b) (amending 50 U.S.C. §1861 (a) and (b)).
- 11 Cal. Gov.C. §§ 6254 (j) and 6267.
- 12 Id. § 6267 (c).
- 13 PATRIOT Act, supra note 1 at § 216 (amending 50 U.S.C. §1842).
- 14 Congressional Research Service, Report to Congress, “The USA PATRIOT A

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“The advancement and diffusion of knowledge is the only guardian of true liberty”

James Madison

Perhaps no other legislation in recent memory has attracted as much criticism from civil rights groups and as much praise from law enforcement circles as the USA PATRIOT Act passed by Congress shortly after the September 11th terrorist attacks.<sup>1</sup>

Likewise, if foreign intelligence information is generated as a result of a federal grand jury subpoena and/or from a federal criminal wiretap, it can now be shared with U.S. intelligence officials in order to more effectively protect the country from terrorist acts.<sup>11</sup>

Earlier this year, the success of information sharing was seen in the federal

## ENDNOTES

- 1 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("PATRIOT Act"), Public Law 107-56, 115 Stat. 272 (2001).
- 2 Churchill, Winston, Hansard, November 11, 1947, at [brainyquote.com/quotes/quotes/s/sirwinston10549.html](http://brainyquote.com/quotes/quotes/s/sirwinston10549.html).
- 3 Prepared remarks of U.S. Attorney General John Ashcroft in Boise, Idaho, August 25, 2003.
- 4 USA Today/CNN/Gallup Poll, August 29, 2003. See also a July 31, 2003, Fox News/Opinion Dynamics Poll, where fifty-five percent of registered voters said that the PATRIOT Act was a good thing for America, while twenty-seven percent thought otherwise. Fox News/Opinion Dynamics Poll, July 31, 2003.
- 5 50 U.S.C. § 1801-1863 (1994).
- 6 50 U.S.C. § 1804.
- 7 United States v. Duggan, 743 F.2d 59 (2nd Cir. 1984); U.S. v. Pelton, 835 F.2d 1067 (4th Cir. 1987); and United States v. Megahey, 553 F. Supp. 1180 (E.D.N.Y. 1982). For a detailed discussion of the effects of this separation between

- national security and criminal cases, see Bulzomi, Michael J., "Foreign Intelligence Surveillance Act, Before and After the USA PATRIOT Act," FBI Law Enforcement Bulletin, June 2003.
- 8 For a listing of these crimes, see 50 U.S.C. § 1801 (a) to (c).
- 9 PATRIOT Act, supra note 1 at § 218 (amending 50 U.S.C. § 1804 (a) (7)(B) and § 1823 (a) (7) (B)).
- 10 In re Sealed Case, 310 F.3d 717 (Foreign Intel. Surv Ct Rev., 2002).
- 11 PATRIOT Act, supra note 1 at § 203a (amending F.R.C.P. Rule 6(e)(3) (c) (I)(V); and § 203b respectively).
- 12 Chachere, Vickie. "Ashcroft: Patriot Act led to USF Professor's Case", Tallahassee Democrat, (Associated Press), September 6, 2003.
- 13 PATRIOT Act, supra note 1 at § 905.
- 14 Id. at § 201 (amending 18 U.S.C. § 2516(1)).
- 15 Id. at § 206 (amending 50 U.S.C. § 2516(1)).
- 16 Id. at § 219 (amending F.R.C.P. Rule 41(b)(3)).
- 17 Id. at § 213 (amending 18 U.S.C. § 3101a).
- 18 Id.

- 19 United States v. Freitas, 800 F.2d 1451 (9th Cir. 1986); U.S. v. Villegas, 899 F.2d 1324 (2nd Cir. 1990).
- 20 PATRIOT Act, supra note 1 at § 215 (amending 50 U.S.C. § 1861, §§ 501 through 503).
- 21 Id. at § 215(a)(1)(2)(b).
- 22 Id. at § 215 (a)(1) and (b)(2).
- 23 Id. at § 215 (amending 50 U.S.C. § 1861, § 502).
- 24 Id. at § 801.
- 25 Id. at § 803.
- 26 Id. at § 805.
- 27 Id. at § 817 (1) (C) (b).
- 28 Id. at §§ 810, 811.
- 29 Id. at § 102 (a)(1).
- 30 Id. at § 102 (b)(1).

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After September 11, 2001, no one doubted the threat of terrorism was serious, yet Americans also understood that the threat to civil liberties from overzealous pursuit of our enemies – both real and imagined – was also quite genuine. Americans took heart in the Constitution's system of checks and balances, including meaningful judicial review.

Unfortunately, just six weeks after the September 11th terrorist attacks, Congress took aim at that system by passing the USA PATRIOT Act,<sup>1</sup> a lengthy and complex statute that amended federal surveillance, detention and law enforcement powers. The PATRIOT Act's controversial provisions share a common theme of undermining the role of the judge in overseeing law enforcement and intelligence

For many years, successive Presidents asserted power to engage in national security wiretaps. Unsurprisingly, use of such wiretaps led to serious civil liberty abuses. The most famous victim was civil rights leader Dr. Martin Luther King, Jr. J. Edgar Hoover's FBI placed a wiretap on Dr. King's telephone conversations, without any court order, allegedly to investigate whether he had connections to international communism. Although none were uncovered, Hoover did discover damaging information about Dr. King's personal life. The government used that information in an attempt to sabotage Dr. King's Nobel Peace Prize, and threatened to reveal it in an anonymous letter urging him to commit suicide.<sup>5</sup>

In *United States v. United States District Court*<sup>6</sup> ("Keith"), the Supreme Court examined national security wiretaps for the first time. The court decided that wiretapping was subject to the Fourth Amendment even if it was conducted for national security purposes. That case involved a domestic terrorist conspiracy to bomb the office of the Central Intelligence Agency in Ann Arbor, Michigan. Still, without dismissing the real national security threat posed by such illegal activity, the court rejected Attorney General John Mitchell's claim of a clandestine domestic intelligence gathering



imposed, law enforcement agents had to go in front of a judge each week to justify continued secrecy. Likewise, the loose “adverse result” standard means that a delay can be justified based on information uniquely in the hands of law enforcement. Judges can decide whether the government has made a case that notice would cause flight or destruction of evidence, but usually will not be in a position to independently evaluate a law enforcement claim that notice would jeopardize a prosecution or delay a trial.

The PATRIOT Act was not needed to allow the government to delay notice in federal criminal cases where the government could show specific harm would otherwise result. Rather, the enactment of looser standards for “sneak and peek” searches substantially reduces the judge’s role in overseeing this invasion of privacy. The PATRIOT Act’s loose standards threaten to make “sneak and peek” the norm, rather than the exception, in all federal criminal investigations – not just terrorism investigations.

#### CONCLUSION

The PATRIOT Act’s contentious provisions were not needed to give the government the power to investigate and prevent terrorism. Prior to the statute, it was always possible to delay notice of a search, under judge-made rules that limited the reasons for such delays and imposed time limits. It was always possible to obtain library and bookstore records, or other sensitive records, with a search warrant based on probable cause. It was always possible to share intelligence information with criminal prosecutors, under careful procedures overseen by the FISC. Thus, the PATRIOT Act’s contentious provisions instead had the effect of undermining the checks and balances that prevent abuse of these powers.

Terrorism threatens not only our sense of safety as Americans, but also our freedom and way of life. Terrorists intend to frighten us into changing our basic laws and values and to take actions that are not in our long-term interests. In passing the PATRIOT Act, Congress took a significant step towards undermining important civil liberties which it needs to correct.

#### ENDNOTES

- 1 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Public Law 107-56, 115 Stat. 272 (2001).
- 2 The Joint Inquiry of the House and Senate Intelligence Committees did not

complete its report until December 2002, more than a year after passage of the PATRIOT Act. The report did not endorse any part of the PATRIOT Act and makes clear that the government’s failure to prevent September 11 was not the result of excessive judicial oversight but rather the government’s failure to effectively use existing powers. Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001: Report of the U.S. Senate Select Comm. on Intel. and U.S. House Permanent Select Comm. on Intel., S. Rep. No. 107-351, H.R. Rep. No. 107-792 (December 2002).

- 3 50 U.S.C. § 1801(e).
- 4 50 U.S.C. § 1805.
- 5 See Marvin Johnson, ACLU Washington National Office, *The Dangers of Domestic Spying by Federal Law Enforcement: A Case Study on FBI Surveillance of Dr. Martin Luther King, Jr.* (Jan. 2002), available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=10610&c=207>.
- 6 407 U.S. 297 (1972).
- 7 *Id.* at 313-314.
- 8 50 U.S.C.A. § 1804(a)(7)(B) (1991). The FISC has not proved an obstacle to widespread use of national security wiretaps of suspected foreign agents. The FISC has, almost without exception, approved government surveillance applications. From 1979 to 2002, annual reports show that 15,264 applications for surveillance orders have been approved (only five with modifications), and only one denied. The government did not appeal that denial.
- 9 See, e.g., ACLU Foundation of Southern

- 26 18 U.S.C. § 2710.
- 27 Gina Marie Stevens, Congressional Research Service Report for Congress, “Privacy: Total Information Awareness Programs and Related Information Access, Collection, and Protection Laws,” at 4 (updated Feb. 6, 2003).
- 28 NAACP v. State of Alabama, 357 U.S. 449, 462 (1958).
- 29 Id.
- 30 18 U.S.C. § 3103a.
- 31 See DOJ Letter to Sensenbrenner, supra note 12 at p. 10.
- 32 See, e.g., U.S. v. Villegas, 899 F.2d 1324, 1337 (2nd Cir. 1990) (imposing a renewable seven-day notice requirement for “sneak and peek” searches); United States v. Freitas, 800 F.2d 1451, 1456 (9th Cir. 1986) (same).
- 33 See Villegas, supra note 32 at 1336 (noting that “sneak and peek” searches may be authorized to prevent “escape of

- the suspect or the destruction of critical evidence”) (citation omitted).
- 34 18 U.S.C. § 2705(a)(2) (defining “adverse result”).

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On September 11, 2001, we witnessed the horrific acts of terrorism that brought death and destruction to American soil. Nineteen Muslim men had carried out the terrorist acts against our country. After six weeks<sup>1</sup> a bill comprised of various prior and some new proposals was presented to Congress. Two days later, President Bush signed the bill into law. Today it is commonly known as the USA PATRIOT Act.<sup>2</sup>

The aim of the PATRIOT Act is to give the legal tools necessary for the government to prevent future acts of terrorism against our country. Congress passed the bill with little debate or oversight. This landmark bill changing the rules of wiretaps, surveillance, nationwide searches, detention, right to counsel and other matters of civil liberties received overwhelming support and was approved by a vote of 357 to 66 in the House of Representatives and 98 to 1 in the Senate.<sup>3</sup>

The reach of the PATRIOT Act is broad and impacts many interests. The loss of liberty appears to be of the greatest concern followed by the erosion of due process, the expansion of search and seizure prerogatives, and the invasion of privacy.

#### I. DETENTION AUTHORITY

American Muslims who had been victims of hate crimes and sporadic outbursts of anger following "9-11"<sup>4</sup> feared that the expanded powers conferred by the PATRIOT Act, particularly in regards to immigrants, would be abused by overzealous law enforcement officers. The statute allows the government to detain any alien upon certification of the Attorney General or Deputy Attorney General that there are "reasonable grounds" to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage.<sup>5</sup>

This authority is so broad that the government can even detain a person who made a charitable donation to an organization that, although not designated as a terrorist organization, has engaged in a "terrorist

activity" in the past.<sup>6</sup> "Terrorist activity"<sup>7</sup> is defined vaguely and "[g]roups that could fit this definition could include Operation Rescue, Greenpeace, and Northern Alliance."<sup>8</sup> In addition, the detained person is not entitled to trial or hearing and a detention beyond a six-month period merely requires a review by the Attorney General or the Deputy Attorney General.<sup>9</sup>

A report by the Justice Department about its operations under the PATRIOT Act confirmed abuses of detained Arab and South Asian Americans and raised many questions about the reasons for their arrests.<sup>10</sup>

The American Muslim community remains fearful. They are aware that after the attack on Pearl Harbor, over a hundred thousand Japanese Americans were put into internment camps, their property lost and life's dreams turned into nightmares. Ten thousand German Americans and three thousand Italian Americans were also placed into detention during that period.

We do not know the true numbers of Muslims who have been detained since the 9-11 attacks. The government is not required to disclose such figures. We do not know and may never find out how many were deported because of mere suspicions. How many more were forced to choose between "voluntary" departure or continued detention?

Most of these deportees have families and friends in their native countries. Generally their families and friends are the establishments of those countries. They are the people who can be cultivated into becoming the strongest supporters of American causes in those countries.

#### II. FLYING WHILE MUSLIM

There are regular incidents of Muslim, as well as Muslim-appearing, air travelers being

Jonathan Turley, a law professor at George Washington University, has stated: "Life for Arab Americans and Muslims increasingly resembles George Orwell's Animal Farm, in which a society dispensed with all rights and replaced them with a single maxim: 'All animals are equal, but some animals are more equal than others.' When it comes to terrorism cases, all citizens are equal but some are more equal than others."<sup>17</sup>

Dennis Archer, the current president of the American Bar Association and the first black person to hold that position, has remarked: "In these times with conflict and unrest in Iraq and in Afghanistan and with our Homeland Security forces seeking out terrorists on our own soil, those of Middle Eastern decent are feeling the sting of profiling and stereotyping as well. All around the country ... immigrants from that part of the world have been held in detention, under suspicions of their activities and their intent."<sup>18</sup>

#### IV. ENEMY COMBATANTS

Yaser Hamdi a.k.a. "American Taliban," Jose Padilla, John Walker Lindh, Richard Reid a.k.a. "shoe bomber," and Zacarias Moussaoui a.k.a. "20th hijacker" are individuals who have made headlines in the war on terror. They are either United States citizens or citizens of influential countries. The denials of their fundamental rights are becoming test cases that may resolve some of the constitutional challenges to the PATRIOT Act.

The American Taliban was captured in Afghanistan and is held in Virginia as an "enemy combatant."<sup>19</sup> Jose Padilla was picked up as a "material witness" in Chicago and is held in South Carolina having also been declared an "enemy combatant."<sup>20</sup> In both these cases the government has taken the position that if a United States citizen is declared to be an "enemy combatant," he can "be detained indefinitely without charges or counsel ...."<sup>21</sup>

The Bush Administration is exceeding the scope of the Ex parte Quirin<sup>22</sup> case involving the military commission trial of Nazis captured after secretly entering the country during World War II. In that decision, the Supreme Court drew a distinction between a lawful combatant and "an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property ...."<sup>23</sup>

Prior to the PATRIOT Act, United States citizens detained or arrested outside the combat zone were not treated as enemy soldiers or prisoners of war. They were never

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| <p>Status for the 107th Congress, USA PATRIOT Act of 2001, <a href="http://thomas.loc.gov">http://thomas.loc.gov</a>.</p> <p>7 PATRIOT Act, supra note 2 at §§ 418, 802.</p> <p>8 Records, supra note 6 at 11023.</p> <p>9 PATRIOT Act, supra note 2 at § 412.</p> <p>10 Jonathan Aiken, "Treatment of detainees under review," CNN Washington Bureau (April 3, 2002), <a href="http://www.cnn.com/2002/US/04/03/inv.detainees.treatment">http://www.cnn.com/2002/US/04/03/inv.detainees.treatment</a>.</p> <p>11 Caryle Murphy, "Intense Airport Scrutiny Angers Muslim Travelers," The Washington Post, September 14, 2003, Page A08.</p> <p>12 Id.</p> <p>13 Id.</p> <p>14 Jonathan Turley, "Skewed Justice for Muslims," Los Angeles Times (July 13, 2003,) <a href="http://www.latimes.com/news/opinion/Sunday/commentary">http://www.latimes.com/news/opinion/Sunday/commentary</a>.</p> | <p>15 People v. Ahmid Chaudhry, San Bernardino Superior Court, Central Division, Case No. FSB24792 (2001); Fourth Appeal Circuit, Division 2, Case No. E029946 (2002); S110164 (2002).</p> <p>16 Matter of Ahmad Imran, File No: A 79-783-305, United States Immigration Services, El Centro, CA.</p> <p>17 Turley, supra note 14.</p> |
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The Public Law Section has bestowed the 2003 Public Lawyer of the Year award on Ariel Pierre Calonne. Chief Justice Ronald George presented the award to Mr. Calonne during the Section's September 5, 2003 reception at the State Bar's annual meeting in Anaheim. The Public Lawyer of the Year award is given annually to a public law practitioner who has quietly excelled in public service. The Section thanks the individuals and firms who contributed to the Public Lawyer of the Year endowment fund. Their generous support made this year's award ceremony possible and helped to ensure the viability of those still to come. Set forth below is the text of the remarks by Chief Justice George and Mr. Calonne.

society with a desire to find intellectual interest and stimulation in my work. I have not been disappointed, and over the years, I have had the privilege of encountering numerous fellow practitioners who have selected the same path and also found it to be richly rewarding.

Public law practitioners may not often get the headlines of a flamboyant litigator or a fast moving mergers and acquisitions specialist – but they provide the glue that ties our society together and ensures that the interests of the public are given due consideration. Public lawyers, every day, have a major impact on policy in a wide range of areas. Each day, they face unique challenges, unprecedented issues, and competing pressures.

In my view, the opportunity to be at the cutting edge of so many important legal issues that affect the public is truly a privilege. Whether in a local, county, state, or federal position, the public lawyer generally is shielded from the direct pressure of the bottom line that affects so many in private practice. This is not to say that the public lawyer is in a stress free environment – far from it. But the public lawyer generally has the benefit of being expected to stay focused on public policy and public interest, as well as the ability to invest the necessary o5(o( , or )eputy)\*-0.0

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#### Introductory Remarks of Chief Justice Ronald George

Good evening. Thank you for inviting me once again to take part in recognizing the recipient of the Public Law Section's Public Lawyer of the Year award. I have, of course, spent my own legal career completely in public service, first as a Deputy Attorney General in the California Department of Justice for seven years, and after that 31 years as a member of the bench.

I began the practice of law with the view that public service would be a good way to match my intention to contribute to



I'd also like to thank the Public Law Section Executive Committee for recognizing me as California's Public Lawyer of the Year for 2003.

Finally, and most importantly, I'd like to thank my client, the City of Palo Alto, for providing me the opportunity to achieve. Every scientist needs a laboratory, and I have had a great one.

As you all know, I am in the unusual position of accepting this prestigious award just 10 days before I become the City Attorney (designate) of Boulder, Colorado. I have taken residence in Boulder after 13 years of service to the City of Palo Alto. I find myself in the enviable position of leaving a richly endowed community to join a community endowed with environmental and human riches. Boulder, like Palo Alto and all California cities, has engaged the good fight to protect the constitutional home rule powers the electorate reserved to them. The challenges will be great.

Yet I leave California grudgingly. I realized the other day that



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The Public Law Section of the State Bar of California wishes to extend its grateful appreciation to the following sponsors of the 2003 Public Lawyer of the Year Award and Reception

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# A Message from the Immediate Past Chair

By Stephen L. Millich, Esq.\*

Now that my five year tenure as a voting member of the Public Law Section Executive Committee is over, I look back upon the state of the Section and the improved services we now provide our members.

For example, in the field of education we provided eight courses at this year's State Bar Meeting in Anaheim for MCLE credit under the leadership of current Chair-elect Bill Seligmann. The courses ranged from the difficult to find, such as Elimination of Bias in the Legal Profession given by Tina Rasnow, to cutting edge issues such as the interaction between the USA PATRIOT Act and Civil Liberties moderated by Fazle Rab Quadri, our present Chair.

The excellent Public Law Journal continues to be published and distributed to our members quarterly under the supervision of Terence Boga, the current Editor. The Legislative Committee, co-chaired by Brenda Aguilar-Guerrero and Mark Sellers, keeps us currently informed of proposed legislation affecting public lawyers. Due to the enthusiastic and effective efforts of Bob Pearman, our Membership Committee Chair, the Section membership has increased by roughly 20% over the past two years. In the last year, we established a Public Lawyer Of the Year (PLOY) endowment fund to ensure that we can continue to present the PLOY award at the annual State Bar meeting to deserving attorneys such as this year's recipient, Ariel Pierre Calonne, the City Attorney of Palo Alto. The list of achievements by Executive Committee members is lengthy and not the proper topic for this brief note.

As this year is ending, the Public Law Section is healthy, will continue to grow and will increase the quality and quantity of services provided to its members. Its leadership is in the able hands of Chair Fazle Rab Quadri for this next year and Chair-elect Bill Seligmann for the following year.

On a personal note, I would like to thank all the members of the Executive Committee and State Bar staff who I have had the pleasure of meeting and working with for their dedication, support and mostly their friendship over the last five years, and I look forward to serving you as an advisor on this, my last year on the Public Law Section Executive Committee of the State Bar of California.

Cordially

Stephen L. Millich

\* Stephen L. Millich ([smillich@simivalley.org](mailto:smillich@simivalley.org)) is the Immediate Past Chair of the Public Law Section Executive Committee. He is Assistant City Attorney to the City of Simi Valley.

# A Message from the Chair

By Fazle Rab Quadri, Esq.\*

Do you ever wonder why you are a public lawyer?

You had many choices to go into professions other than law. After undergraduate study, you could have chosen another field or even entered the job market. After law school, you had even more choices. Yet you stayed the arduous path and became a public lawyer.

For a moment, assume that you are a middle-aged lawyer or you are in your prime with ten or so years since admission to the Bar. Now let us look back and change your past. If after college or even after law school, you had become a management trainee at a small manufacturing plant, today you would be fairly high up on the corporate ladder getting close to becoming a top executive. The big bonuses could be in sight.

If you had become a substitute teacher, you would be in the noble profession of high school; or you would be a university professor involved in academia politics, which can be similar to some aspects of practicing public law.

If you had become a bank cashier trainee, you would be a branch manager and likely keep “banker hours” and get home in time to see your kids playing and of ages that they still listen and obey you.

If you had become a travel agency secretary and made the right job moves, you could be working on a cruise ship instead of cruising on the net or between law buildings.

Finally, consider this one - if you had joined a seminary, you would be a preacher with a flock and The Judge up there is infinitely wiser than any “Solomon” on the Bench!

These choices may look attractive now. Despite their attractiveness, you made the right choice. You chose to become a lawyer and a public lawyer no less. Your reason for becoming a public lawyer is not as important as the fact that you are a public lawyer.

As public lawyers, we get opportunities to do more good for the public and the society than most other lawyers. Sometimes the opportunity is ever so slight, but an opportunity nevertheless. When such an opportunity comes our way, let us take the opportunity and leave this place better than how we found it.

Some may not agree with me, but lawyers are smart people and the public lawyers are the most noble of us all. I am proud to be part of your team.

\* Fazle Rab Quadri ([quadri@mdaqmd.ca.gov](mailto:quadri@mdaqmd.ca.gov)) is General Counsel of the Mojave and Antelope Air Quality Management District in southern California. He is Chair of the Public Law Section Executive Committee.



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